

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-429-T - ORDER NO. 2002-838
DECEMBER 11, 2002

IN RE: Application of Thompson & Webster, LLC)	ORDER DENYING
d/b/a Two Men and A Truck of Augusta,)	PETITION FOR
3520 Wrightsboro Road, Augusta, GA 30909,)	RECONSIDERATION
for a Class E Certificate of Public)	AND/OR REHEARING
Convenience and Necessity to Transport)	
Household Goods)	

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Reconsideration and/or Rehearing ("Petition") filed by Thompson & Webster, LLC d/b/a Two Men and A Truck of Augusta ("Thompson & Webster"). The Petition requests that the Commission reconsider, or grant rehearing, in the matter concerning Order No. 2002-260 (April 5, 2002) in which the Commission granted Thompson & Webster a Class E Certificate of Public Convenience and Necessity ("Class E Certificate of PC&N") to move household goods within a certain scope in the State of South Carolina. While the Commission, in Order No. 2002-260 granted a Class E Certificate of PC&N to Thompson & Webster, the Commission did not grant the full scope of authority requested by Thompson & Webster. Rather, the Commission granted a more limited scope of three counties, instead of the nine counties requested by Thompson

& Webster in its application. For the reasons set forth below, the Commission denies Thompson & Webster's Petition.

BACKGROUND

In its application seeking a Class E Certificate of PC&N to move household goods, Thompson & Webster sought the following scope of authority:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
Between points and places in Aiken, Barnwell, Edgefield, Greenwood, Lexington, McCormick, Orangeburg, Richland, and Saluda Counties and from points and places in Aiken, Barnwell, Edgefield, Greenwood, Lexington, McCormick, Orangeburg, Richland, and Saluda Counties to points and places in South Carolina.

By Order No. 2002-260, the Commission found Thompson & Webster "fit, willing, and able" to provide the services which Thompson & Webster requested, but the Commission found that Thompson & Webster had not sufficiently proved the area or scope to be served. As for proof of the scope of authority, S.C. Code Ann. Section 58-23-590(C) (Supp. 2001) places the burden of proof on the applicant and provides that "the applicant [prove] to the Commission that ... the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity." The Commission did find, however, that Thompson & Webster had proved that the public convenience and necessity required Thompson & Webster's services in Aiken, Edgefield and McCormick Counties, and the Commission granted Thompson & Webster a scope of authority comprised of Aiken, Edgefield, and McCormick, Counties.

In reaching its decision, the Commission made certain findings of fact based upon the evidence of record as supplied by Thompson & Webster's three witnesses: Mike

Thompson, Tara Kreh-Boyer, and William Moore. Part of the Commission's findings were based on the characterization by the Commission that Ms. Kreh-Boyer's testimony was self-serving. Ms. Kreh-Boyer is Vice-President of KB Enterprises d/b/a Two Men and A Truck of Columbia and is also a financial partner in Thompson & Webster.

THOMPSON & WEBSTER'S PETITION

In its Petition, Thompson & Webster alleges error in the Commission's decision in three particulars. First, Thompson & Webster alleges that no evidence from the record supports the Commission's finding that Ms. Kreh-Boyer's testimony was self-serving. Petition, p. 2. Second, Thompson & Webster asserts error in that the Commission's finding and characterization of Ms. Kreh-Boyer's testimony as self-serving is fundamentally unfair to Thompson & Webster because Thompson & Webster had no opportunity to respond to such a determination. Finally, Thompson & Webster argues that Ms. Kreh-Boyer's testimony satisfied the Commission's requirement of a "shipper witness."

DISCUSSION

In Order No. 2002-260, the Commission found that "[t]he services proposed by Thompson & Webster in the entire area requested are not required by the public convenience and necessity." Order No. 2002-260, p. 13. The Commission made this finding of fact based upon the testimony of Thompson & Webster's three witnesses. *Id.* While Mr. Thompson presented testimony that he had received calls for his services from Aiken and Edgefield Counties, he could not testify to the need for the moving services of Thompson & Webster in the other seven counties which Thompson & Webster sought to

serve. Mr. Moore offered no evidence regarding the need for intrastate moving services within the requested scope. While Ms. Kreh-Boyer offered her opinion that a need exists for another household goods mover in the area of the requested scope, her testimony lacked a specific factual basis for her opinion. Thus, the Commission noted that the only evidence presented by Thompson & Webster was based on individuals with financial interests in the outcome of the proceeding and characterized the testimony of Ms. Kreh-Boyer as self-serving on that basis.

By its Petition, Thompson & Webster argues that Ms. Kreh-Boyer's testimony was subject to cross-examination and should not be discounted due to the fact that she maintains a financial interest in the outcome of the proceeding. Further, Thompson & Webster noted that no person offered any testimony or evidence discounting or opposing Ms. Kreh-Boyer's testimony. While it is true that no testimony opposing Ms. Kreh-Boyer's testimony was presented, that does not diminish this Commission's role to make the determination as to whether the evidence supports the need for the proposed services in the area which is sought to be served.

The Commission must make a determination as to whether an applicant for a Class E Certificate of PC&N to move household goods has demonstrated that the present public convenience and necessity require the proposed services, and in this case upon weighing the evidence, the Commission found that Thompson & Webster had not demonstrated a need for its services throughout the entire scope of requested authority. The Commission would note that Ms. Kreh-Boyer testified that she would refer business to Thompson & Webster if her Columbia franchise did not have the authority to make the

move or if the move was more economical for Thompson & Webster to make than for her Columbia based Two Men and A Truck franchise to make or if her Columbia based franchise had a full schedule. The scenarios of when Ms. Kreh-Boyer would refer business to Thompson & Webster do not reflect an actual need for Thompson & Webster's services in the area in which Thompson & Webster seeks to serve; rather, those scenarios reflect a desire for a Two Men and A Truck franchise to make the moves.

Further, Ms. Kreh-Boyer testified that her business turns down fifteen to twenty moves a day depending upon the season. On cross-examination Ms. Kreh-Boyer stated that the fifteen to twenty calls per day that her business turns down are not all from the area sought to be served by Thompson & Webster and that the moves are turned down for reasons other than a full schedule. In fact, Ms. Kreh-Boyer stated that when she turns down a move, she does not give references or referrals for other movers in the area because she does not recommend another moving company unless she has personal knowledge of the quality of service that the other company provides. This testimony does not reflect a need for additional moving services. It only shows a need for moving services provided by someone known to Ms. Kreh-Boyer. Additionally, Ms. Kreh-Boyer can only speak to those calls which she refuses; she did not provide testimony regarding whether there are sufficient movers in the area to handle the capacity of moves in the area of the requested scope of authority.

Thus, the Commission's characterization of Ms. Kreh-Boyer's testimony as self-serving was based upon a review of her testimony as a whole. While Ms. Kreh-Boyer's testimony clearly demonstrates that she wants a Two Men and A Truck franchise to make

the moves in the area requested by Thompson & Webster, her testimony does not provide a sufficient basis upon which the Commission could find that the public convenience and necessity require the moving services proposed by Thompson & Webster in the entire nine county region which Thompson & Webster sought to serve.

Thompson & Webster also alleges that the Commission's finding that Ms. Kreh-Boyer's testimony was self-serving is "fundamentally unfair" to Thompson & Webster. Petition, pp. 4-5. Thompson & Webster asserts that fundamental fairness and due process entitle Thompson & Webster to have the opportunity to address any issues related to its application on the record in the hearing and that it had no such opportunity. *Id.* The Commission finds no merit in Thompson & Webster's assertion. Thompson & Webster had the burden of proving that the public convenience and necessity required its services in the entire nine county region that it requested to serve in its application. Mr. Thompson provided evidence concerning Aiken and Edgefield Counties. In fact, Mr. Thompson could not even state all nine counties that he proposed to serve when questioned on direct examination. Mr. Moore's testimony provided no assistance to the Commission with regard to the public convenience and necessity because he admitted that he makes moves primarily in the area of Rock Hill and had no knowledge about the area which was the subject of the application. Ms. Kreh-Boyer, as discussed above and below, stated an opinion but provided little factual basis to support that opinion. Thus, Thompson & Webster had its opportunity to present its case; it just did not meet its burden.

Finally, the Commission would address Thompson & Webster argument that Ms. Kreh-Boyer's testimony was consistent with the Commission's requirements for the

testimony of a shipper witness as set forth in Order No. 1999-654. In Order No. 1999-654, the Commission described a “shipper witness” as, *inter alia*, “in the context of providing supporting testimony regarding the present state of public convenience and necessity, a shipper witness is someone who, through firsthand knowledge, is familiar with the availability, or unavailability, of moving services in an area.” Order No. 2002-654, p. 3. Thompson & Webster asserts that Ms. Kreh-Boyer provided undisputed evidence addressing this requirement and the other requirements of a shipper witness as set forth in Order No. 2002-654. However, the Commission disagrees with Thompson & Webster’s assertion.

The Commission would acknowledge that Ms. Kreh-Boyer, as the owner and operator of a moving company in South Carolina, may possess firsthand knowledge of the moving business. However, firsthand knowledge of the moving business may or may not lend a witness to knowledge of whether the public convenience and necessity require additional movers in a particular area. As noted above, Ms. Kreh-Boyer testified regarding calls for service that her business in Columbia refuses and that such refusals are made for a variety of reasons. However, Ms. Kreh-Boyer did not state that there are no other movers in the area which could perform the moves which she turns down. She stated that she would not refer those callers to movers of whom she was not familiar with their work. That does not equate to a need for additional movers; as noted above, that shows the desire for a Two Men and A Truck franchise to make those moves.

CONCLUSION

The Commission has considered the points raised by Thompson & Webster in its Petition and finds no error in the Commission's decision in Order No. 2002-260. Accordingly, Thompson & Webster's Petition is dismissed.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)